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DEPARTMENT OF COMMERCE

International Trade Administration

(A-533-869)

Certain New Pneumatic Off-the-Road Tires from India: Affirmative Amended Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Department) is amending its final negative determination of sales at less-than-fair-value (LTFV) with respect to certain new pneumatic off-the-road tires (OTR tires) from India to correct ministerial errors in the calculation of the weighted-average dumping margin of Alliance Tires Private Limited (ATC), one of the mandatory respondents in the investigation. Correction of these errors results in a revised margin for ATC that is above *de minimis*, and, thus, also results in an affirmative determination of sales at LTFV. The Department is also assigning a new “All-Others” rate.

DATES: Effective [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Trisha Tran, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6412, or (202) 482-4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 6, 2017, the Department publicly announced its *Final Determination*¹ in the

¹ See *Certain New Pneumatic Off-the-Road Tires from India: Final Negative Determination of Sales at Less Than*

LTFV investigation on OTR tires from India. On January 9, 2017, Petitioners² alleged that the Department made certain ministerial errors related to the application of partial adverse facts available (AFA) in the *Final Determination*.³ On January 17, 2017, ATC submitted its rebuttal comments.⁴

Based on an analysis of the allegations submitted by Petitioners, the Department determined that it did not make ministerial errors with respect to the application of partial AFA, as defined by section 735(e) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.224(f).⁵ However, in the context of evaluating Petitioner's allegation, the Department determined that it made ministerial errors within the meaning of section 735(e) of the Act and 19 CFR 351.224(f) with respect to ATC's freight expenses, home market credit expenses and U.S. indirect selling expenses.⁶ Accordingly, the Department revised the margin calculation for ATC, and assigned a new "All-Others" rate, as discussed below.

Scope of the Investigation

The products covered by this investigation are OTR tires from India. For a complete description of the scope of the investigation, *see* Appendix I of this notice.

Ministerial Errors

Section 735(e) of the Act, and 19 CFR 351.224(f) define a "ministerial error" as an error

Fair Value and Final Determination of Critical Circumstances, 82 FR 4848 (January 17, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum (Final IDM).

² Petitioners are Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the USW).

³ *See* Letter from Petitioners, "Certain New Pneumatic Off-the-Road Tires from India: Petitioners' Ministerial Error Comments regarding ATC," dated January 9, 2017 (Petitioners' Comments).

⁴ *See* Letter from ATC, "Certain New Pneumatic Off-the-Road Tires from India: ATC Tires Private Limited's Reply to Petitioners' Ministerial Error Comments," dated January 17, 2017 (ATC's Rebuttal Comments).

⁵ *See* Memorandum, "Antidumping Duty Investigation on Certain New Pneumatic Off-the-Road Tires from India: Allegation of Ministerial Errors in the Final Determination," dated January 26, 2017 and hereby adopted by this notice (Ministerial Error Memorandum).

⁶ *Id.*

“in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial.”⁷

The Department finds that the purported errors alleged by Petitioners’ do not constitute ministerial errors within the meaning of 19 CFR 351.224(f).⁸ Specifically, the Department did not state that it intended to determine, as partial AFA, that 66 percent of the value of ATC’s U.S. sales passed the Cohen’s *d* test in order to apply the average-to-transaction methodology.⁹ The Department intentionally applied partial AFA to the standard average-to-average differential pricing methodology in the final margin program because 65.33 percent of the value of ATC’s U.S. sales passed the Cohen’s *d* test, and the mixed methodology margin did not result in a meaningful difference between the standard and mixed methodology margins.¹⁰ Moreover, the Department did not intend, as Petitioners allege, to apply partial AFA to all three methodologies, prior to determining whether there was a meaningful difference.¹¹

Additionally, in reviewing the record, the Department found that: (1) the Department inadvertently omitted additional fields reported by ATC as part of its minor corrections that should have been part of the final margin calculation; (2) ATC did not revise the home market credit expenses to include the correct payment dates for the particular sales identified as minor corrections at the home market sales verification; and (3) the Department inadvertently included the costs associated with the unreported sample U.S. sales in the indirect selling expenses. These

⁷ See section 735(e) of the Act.

⁸ See Ministerial Error Memorandum.

⁹ *Id.*; see also, Memorandum, “Antidumping Duty Investigation of Certain New Pneumatic Off-the-Road Tires (OTR) from India: Analysis of the Final Negative Determination Margin Calculation for ATC Tires Private Limited,” dated January 3, 2017 (ATC’s Final Analysis Memorandum) at 5-6 and Attachment 2.

¹⁰ See Final IDM at 19.

¹¹ *Id.* at 3-4.

are unintentional errors, similar to the errors identified as ministerial errors in the regulations, and, therefore, constitute ministerial errors within the meaning of 19 CFR 351.224(f). Therefore, the Department corrected these errors in the final margin program by: (1) including the two additional freight expense fields (*i.e.*, OTHFRTU, PICKUP_CHGU); (2) revising the home market credit expenses to include the correct payment dates for the particular sales identified at the home market sales verification; and (3) revising the indirect selling expenses to exclude the costs associated with the free sample U.S. sales used in the application of partial AFA to those U.S. sales. Based on the above analysis, ATC's weighted-average dumping margin increased from zero percent to 3.67 percent.

Negative Determination of Critical Circumstances

In the *Final Determination*, the Department considered the Petitioners' critical circumstances allegation with respect to producers and exporters subject to the all others rate and determined that the finding for whether critical circumstances exist with respect to such producers and exporters was moot because the antidumping duty margins for ATC and Balkrishna Industries Limited (BKT), the other mandatory respondent, were zero.¹² ATC's weighted-average dumping margin increased from zero percent to 3.67 percent as a result of corrections to ministerial errors, which has resulted in a similar increase in the "All-Others" rate. Accordingly, we are addressing whether critical circumstances exist with respect to the "All-Others" rate.

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist in antidumping duty investigations if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject

¹² See *Final Determination*, 82 FR at 4849.

merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported, knew or should have known that the exporter was selling the subject merchandise at LTFV and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

To determine whether there is a history of dumping and material injury, the Department generally considers previous antidumping duty orders on subject merchandise from the country in question in the United States or current orders imposed by other countries with regard to imports of the same merchandise.¹³ Because there is no previous antidumping duty order on OTR tires from India or record evidence of current orders imposed by other countries with regard to imports of the same merchandise, the Department finds that there is no history of injurious dumping of OTR tires from India pursuant to section 735(a)(3)(A)(i) of the Act.

Furthermore, the Department normally considers dumping margins of 25 percent or more for export price sales and 15 percent or more for constructed export price sales sufficient to impute importer knowledge of sales at LTFV.¹⁴ The estimated weighted-average dumping margins in this investigation do not exceed the threshold sufficient to impute knowledge of dumping (*i.e.*, 25 percent for EP or 15 percent for CEP sales). Therefore, the Department finds that there is an insufficient basis to find that importers knew nor should have known that

¹³ See *Certain Oil Country Tubular Goods from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009); unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

¹⁴ See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422, 17425 (March 26, 2012).

exporters in India were selling subject merchandise at LTFV.¹⁵ As such, we find that critical circumstances do not exist.

Amended Final Determination

As a result of correcting the ministerial errors, we determine that the weighted-average dumping margins and cash deposit rates are as follows:

Exporter/Producer	Weighted-Average Dumping Margins (percent)	Cash Deposit Rate Adjusted for Subsidy Offset (percent)
ATC Tires Private Ltd.	3.67 percent	0.00 percent
All-Others	3.67 percent	0.00 percent

As stated above, the weighted-average dumping margin for BKT is unchanged from the *Final Determination* (i.e., 0.00 percent).

“All-Others” Rate

Section 735(c)(5)(A) of the Act provides that the estimated “All Others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. As a result of our corrections to ATC’s final weighted-average margin, the only rate that is not *de minimis* in this investigation is the rate calculated for ATC. Consequently, in accordance with section 735(c)(5)(A) of the Act, we have assigned the rate calculated for ATC as the “All-Others” rate, as indicated in the “Amended Final Determination Margins” section above.

¹⁵ See *Certain Oil Country Tubular Goods from the Republic of Korea: Negative Preliminary Determination of Sales at Less than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 79 FR 10480 (February 25, 2014), unchanged in *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less than Fair Value, Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014).

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation on all appropriate entries of OTR tires from India, except as noted below, which were entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Additionally, because the weighted-average dumping margin for BKT in the *Final Determination* (i.e., 0.00 percent) is unchanged, the Department is not directing CBP to suspend liquidation of entries of OTR tires from India produced and exported by this entity. The instructions suspending liquidation will remain in effect until further notice.

The Department will also instruct CBP to require cash deposits for suspended entries equal to the amounts as indicated above, which are adjusted for certain countervailable subsidies, where appropriate. The all-others rate applies to all producers or exporters not specifically listed. For the purpose of determining cash deposit rates, the estimated weighted-average dumping margins for imports of subject merchandise from India have been adjusted, as appropriate, for export subsidies found in the final determination of the companion countervailing duty investigation of this merchandise imported from India.¹⁶

U.S. International Trade Commission

In accordance with section 735(d) of the Act, we notified the U.S. International Trade Commission (ITC) of the *Final Determination* and our amended final determination. As the preliminary determination was negative and the amended final determination is affirmative, in accordance with section 735(b)(3) of the Act, the ITC will determine within 75 days of the

¹⁶ See *Countervailing Duty Investigation of Certain New Pneumatic Off-the-Road Tires from India: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 2946 (January 10, 2017); see also section 772(c)(1)(C) of the Act.

affirmative amended final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury exists, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all appropriate imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This amended final determination is published in accordance with section 735(e) of the Act and 19 CFR 351.224(e).

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

January 30, 2017

(Date)
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